THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.10.2007

\+ **CS(OS) 591/2007**

M/S K & K HEALTH CARE (P) LIMITED ... Plaintiff

- versus -

M/S FITNESS WORLD & OTHERS ... Respondents

Advocates who appeared in this case:

For the Plaintiff : Mr K.G. Bansal with Mr S.K. Bansal and Mr Suwarn Rajan

For the Defendants : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This is a suit filed for, *inter alia*, a decree of permanent injunction to restrain the defendants from passing off their products as those of the plaintiff's. Summons of the suit were issued and served upon the defendants and, at one point of time, the defendants had entered appearance through their counsel as would be indicated by the order dated 09.07.2007. Thereafter, nobody appeared on behalf of the defendants and on 31.08.2007, the defendants were directed to be

proceeded with *ex parte*. The plaintiff was directed to lead its *ex parte* evidence.

2. The plaintiff has filed an affidavit of Mr Dinesh Kapur by way of evidence. The said Mr Dinesh Kapur is a Director of the plaintiff company. The documents have also been exhibited as PW-1/1 to PW-1/5 as well as Ex. PW1/D1. Since the allegations made in the plaint have been supported by the affidavit of Mr Dinesh Kapur and the same have gone uncontroverted, the same are to be accepted. As per the statements made in the plaint and the affidavit, the plaintiff has adopted the word mark "FITNESS WORLD" since 1993. It has instituted this passing off action on the basis of prior user. According to the plaintiff, the defendant has threatened to use the same mark "FITNESS WORLD" as would be apparent from the brochure (Ex. PW-1/D-1). This action of the defendant came to the knowledge of the plaintiff towards the end of 2006. It is thereafter that the present suit was instituted. Since there is no denial of the allegations contained in the plaint, it will have to be accepted that the plaintiff is the proprietor of the word mark "FITNESS WORLD" and that it has been using the same in respect of its goods since 1993. It is also established that the defendant had threatened to use

the same some time towards the end of 2006. Therefore, on the basis of prior uninterrupted use, the plaintiff is entitled to a decree of passing off in its favour and against the defendants.

2. Accordingly, the suit is decreed in terms of prayer (a) contained in para 28 of the plaint. The learned counsel for the plaintiff gives up the prayers indicated in para 28 (b) (c) & (d) of the plaint.

3. Insofar as the prayer for damages is concerned, which is contained in sub-para (e) of para 28 of the plaint, the learned counsel for the plaintiff has been unable to demonstrate the extent of damages suffered by the plaintiff on account of passing off action on behalf of the defendants. However, he states that in such cases, punitive damages may be imposed on the defendants. He submitted that such a procedure was adopted by this court in several cases beginning with the decision in ***Time Incorporated v. Lokesh Srivastava & Another*****: 2005 (30) PTC 3 (Del)**.

4. The plaintiff is also entitled to a decree of punitive damages against the defendants which I quantify at Rs 50,000/-. The suit is

decreed as indicated above with costs. The suit as well as all the pending applications stand disposed of. The formal decree be drawn up.

BADAR DURREZ AHMED
(JUDGE)

October 08, 2007
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